REPORT AND RECOMMENDATIONS
OF THE
ALBERTA ENVIRONMENTAL IMPACT ASSESSMENT
TASK FORCE
2 MARCH 1990

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ALBERTA
Environmental Impact
Assessment Task Force **Office of the Chairman**

6th Floor, Oxbridge Place, 9820-106 Street, Edmonton, Alberta T5K 2J6

2 March 1990

The Hon. Ralph P. Klein
Minister
Alberta Environment
130 Legislature Building
EDMONTON, Alberta
T5K 2B6

Dear Mr. Klein:

We are pleased to submit our report and recommendations on the review of Alberta's Environmental Impact Assessment process.

The results of our assignment are more than just the efforts, knowledge and experience of the eight Task Force members. They reflect the dedicated efforts of a diverse section of Albertans who are concerned about the environmental future of our province.

We believe the workshop was a unique concept in the development of new legislation.

We appreciate the opportunity to participate in this process, and trust the conclusions of this report will be reflected in the new legislation.

Ronald Peiluck, Chairman

Martha Kostuch

Douglas Bruchet

Bruce MacLock

Ed Brushett

Fred Schulte

Stephen Howes

Brian Staszenski

ACKNOWLEDGEMENTS

The members of the Alberta Environmental Impact Assessment Task Force would like to acknowledge the efforts of a number of individuals who made completion of this report possible. In particular we would like to thank Yvonne Lloyd for her invaluable assistance in recording meeting minutes, organizing the Workshop and preparing the final report.

We would also like to extend our appreciation to the facilitators who contributed to the success of the Workshop. They were under the direction of Dr. Ray Rasmussen and included the following: Cheryl Bradley, Elise Bruchet, Bill Diepeveen, Kerry Lowe, Bruce Milne, and John Shires.

Finally, we thank the Department of Environment for providing the consulting and expense budgets necessary to allow the Task Force to complete its mandate.

TABLE OF CONTENTS

	Page
LETTER TO THE MINISTER	
ACKNOWLEDGEMENTS	
INTRODUCTION	1
BACKGROUND	2
WORK OF THE TASK FORCE	3
TASK FORCE RECOMMENDATIONS	4
Definition of Environment	4
Definition of the Public	4
The Board	4
Environmental Impact Assessment Legislation	5
Process and Procedures	7
Public Involvement & Notification	7
Intervenor Funding	8
Workshop Recommendations - Interim Process	8
A. Native Participation	8
B. Public Consultation in the review of the Draft Legislation	9
C. Interim EIA Decision-Making Process	9
General Policy Recommendations	10
APPENDICES	
I Terms of Reference - EIA Task Force	
II Workshop Focus Paper	
III Workshop Participants List	

INTRODUCTION

Environmental issues have risen to the top of the public agenda in Alberta, in Canada and elsewhere in the world. Albertans, like many Canadians, are demanding opportunities to be involved in environmental decision making, and also to be part of the development of processes and legislation which will guarantee sound environmental protection practices. The Environmental Impact Assessment (EIA) Task Force represents a way in which the public has been involved in the planning and preparation of draft legislation.

The establishment of the EIA Task Force was the result of the public, industry and the Alberta Environmental Network (AEN) approaching the Environment minister, and requesting involvement in any review of environmental impact assessment guidelines.

The Environmental Impact Assessment Task Force was established in December 1989 by the Honourable Ralph Klein, Minister of the Environment. The Task Force was directed to examine the environmental impact assessment (EIA) process in Alberta in an informal and timely fashion: and to advise the Minister on possible changes to the current EIA guidelines.

The Task Force was designed to represent many of the groups and individuals involved in the EIA process and comprised seven members: two nominated by the Minister of the Environment to represent the Government of Alberta: two nominated by the Alberta Environmental Network to represent the public: two nominated by the Canadian Petroleum Association and the Alberta Forest Products Association to represent industry: and a chairman, nominated by the Minister of the Environment.

Members nominated to the Task Force were: Ron Peiluck, Chairman; Doug Bruchet, Director, Health, Safety and Environment, Canadian Petroleum Association; Stephen Howes, Alberta Forest Products Association; Martha Kostuch, Alberta Environmental Network; Bruce MacLock, Director, Planning Division, Alberta Environment; Fred Schulte, Director, Environmental Assessment Division, Alberta Environment, and Brian Staszenski, Environmental Resource Centre.

The Task Force held its first meeting in mid-December and decided to add a representative from the Energy Resources Conservation Board (ERCB) as the ERCB's 50-year history of a public hearing process could serve as a model. Ed Brushett, Manager, Environment Protection, ERCB was nominated to join the Task Force.

Before outlining the process used by the Task Force to fulfil its mandate, it is necessary to set out background information on the EIA process as it now operates in Alberta.

BACKGROUND

The need for Environmental Impact Assessments (EIAs) in Alberta originated with the unprecedented pressure for resource development in the early 1970s. At that time, an environmental regulatory framework was being put into place and with the passage of the Land Surface Conservation and Reclamation Act in 1974, referral mechanisms, coordinated by Alberta Environment, were developed to ensure coordinated review and approval of resource developments. Provision was made in Section 8 of that act for EIAs for the larger, more environmentally complex developments for which normal referrals were not appropriate.

The Alberta EIA system developed in response to the prevailing economic, political and regulatory climate of the 1970s and early 1980s. There was an unprecedented number and variety of resource initiatives. At the same time, the public was demanding input into the decisions being made on these projects. The EIA process was considered the best vehicle to accommodate these divergent needs. Consequently, the Alberta EIA Guidelines were issued to assist proponents of proposed developments who are required to prepare and submit EIAs.

The Alberta government opted for a flexible approach to environmental assessment based on guidelines rather than a system based on regulations as practised in some of the other provinces. The system for resource development approval is a staged approach. Conceptual level evaluation (such as the EIA) leads to more detailed regulatory approvals which are ultimately issued by a number of government agencies. EIAs are called at the discretion of the Minister of the Environment upon determination that such a requirement is in the public interest.

EIAs are required as a matter of government policy on major projects such as coal mines, commercial in-situ oil sands plants, thermal or hydro power generation plants, refineries, petrochemical plants, sour gas plants, transmission lines, pipelines, major recreational complexes and water resource developments. When deciding whether or not an EIA is required, Alberta Environment considers such factors as project size and location, technology, public concern and project complexity.

Enquiries from proponents are the usual source of referrals since the EIA Guidelines specify that proponents should seek clarification if an EIA is required. However, individual members of the public do bring projects to the attention of the Minister with recommendations that EIAs be called. In addition, referrals are received from elected representatives and other government agencies. A separate Ministerial Order is issued in each case where such a requirement is found to be necessary.

Once the scope of the EIA is set, the proponent begins gathering data and doing research which will determine the environmental impact of the proposed project. The proponent must present information that identifies existing conditions, assesses any possible negative impacts and demonstrates how the company will deal with them. When the necessary information has been obtained, the proponent prepares the report and informs the public that the document is ready for review. This allows the public to see how their concerns have been addressed and gives the proponent an opportunity to confer with the public before submitting the report to the department.

Alberta Environment conducts an interdepartmental review of the EIA to identify information deficiencies. These deficiencies are communicated to the proponent, who then prepares supplemental information. This information is also available to the public for review. As soon as all of the requirements of the EIA have been met and the deficiencies have been answered to the satisfaction of Alberta Environment, the proposal may be set down for a public hearing.

More than one hundred projects have been reviewed under the Alberta EIA system since its introduction in 1974.

WORK OF THE TASK FORCE

Environmental concerns and values have changed enormously since the EIA guidelines were first established, and the current system does not meet the province's needs for the Nineties. The public is demanding more; more stringent standards, greater involvement and more inclusive legislation which incorporates a revised EIA process.

The Task Force was given the mandate to explore and recommend ways and means of evaluating and assessing future natural resource development through a new environmental impact assessment process and accompanying legislation. It was an opportunity to participate in a process which will provide direction for the living and working environment for Albertans today, and for the future.

Since the first meeting in December, the Task Force has held numerous meetings and sub-committee sessions. The meetings sought to develop a focus paper and agenda for a workshop of representatives from key stakeholder groups. At the same time, the Task Force members obtained further input and suggestions from their own constituent groups.

The workshop was held February 16 and 17 and assembled 70 people who represented the diversity of stakeholders in the EIA process. Representatives of government, industry and the public, through non-government organizations, attempted to achieve a balanced and considered approach to a complex topic.

The workshop featured common discussions on general policy issues: small group discussion on the focus paper prepared by the Task Force, and concluded with the entire group committed to identifying common grounds, similarities and major differences.

Following the workshop, the Task Force reconvened to analyze the results of the workshop and finalize their report and recommendations to the Minister.

TASK FORCE RECOMMENDATIONS

DEFINITION OF ENVIRONMENT

The Task Force is recommending an all-encompassing definition of environment as one means of reflecting its belief that environmental considerations are an integral component of all provincial government policies and programs. Any new legislation must embody a broad definition of environment.

The Task Force recommends the legislation incorporate the following definition:

"Environment means the components of the Earth and includes:

(a) air, land and water
(b) all layers of the atmosphere
(c) all organic and living organisms
(d) the interacting natural systems that include components referred to in parts (a) to (c), i.e. the biophysical environment; and
(e) those aspects of the human economic, social, cultural and health environments which interact directly and indirectly with the biophysical environment."

DEFINITION OF THE PUBLIC

The Task Force recognizes that there is no homogenous public rather it is pluralistic and diverse. There are a variety of groups and associations, both informal and formal, which comprise of "the members of the community in general" (Oxford), the public. Those groups, chambers of commerce, the media, industry, government, environmental groups, aboriginal peoples, etc. each represent one component in a diverse public. No single individual or organization has the necessary resources or interests to adequately represent the broader public or community. The Task Force endorses the right of the broad public to participate in the EIA process and they wish to ensure that the EIA process is based on that premise.

THE BOARD

The Task Force recommends that a permanent Board be established to approve/deny projects proposed for Alberta.

The Board should be the focal point for decision making.

The Board should make reasoned decisions subject to appeal to the Executive Council (Cabinet).

The powers of the Board should be quasi-judicial.

The Board should have the authority to appoint panels which can include members from outside the Board.

The Board should be empowered to deal with jurisdictional matters to minimize overlap and prevent a multiple hearing process.

The Board should have discretionary screening powers where projects fall outside of the inclusion/exclusion list.

The Board's review should be comprehensive in terms of the environmental, technical, social and economic impacts, and need for the project.

The Task Force recommends consideration of the following options which were reviewed at the workshop. The Task Force found some preference for No. 1, however, all options received support.

1. A new Board should be formed to review all projects.

2. a) A new Board should be formed to review and make decisions on non-energy projects; and

   b) The ERCB legislation should be amended to permit assessment of energy projects in the manner proposed in this report.

3. The ERCB legislation should be amended so that it becomes the new Board.

ENVIRONMENTAL IMPACT ASSESSMENT LEGISLATION

The Task Force recommends that the following be included in the new legislation. Specifically, the EIA process should identify and analyze the potential of both positive and negative impacts of a proposal, analyze the significance of those impacts, and determine the acceptability of the proposal.

EIAs should be conducted on projects which may have significant environmental impacts, where the impacts are unknown, or where there are major public concerns.

The EIA legislation should apply to both private and public projects, including the complete range of major land use allocations related to forestry, agriculture and urban annexation.

The legislation should be binding and enforceable.

There should be a minimum of discretion in the legislation. Where there is discretion there should be some type of appeal mechanism.

The prime responsibility for assessment of cumulative impacts should lie with the government.

There should be a minimum of overlap in the process. The EIA should be comprehensive and, in conjunction with the other factors that go into the assessment of a project, should include assessment of the 'no go option' and the alternatives.

Specifically, the legislation should embrace the following components:

1. to identify existing conditions (baseline data) that should be focused on, and indicators and areas of major concern

2. to describe potential positive and negative impacts (including cumulative and regional, temporal and spatial)

3. to analyze the significance of those impacts

4. to develop a plan to mitigate those impacts which are negative

5. to identify impacts which are not fully mitigated

6. to identify the significance of those impacts that cannot be fully mitigated

7. to consider the alternatives to the proposal (including the alternative of not proceeding (no go option) and the impacts of those alternatives)

8. to develop a plan to monitor predicted environmental impacts of proposal into the future

9. to develop a contingency plan to respond to unpredicted negative impacts

10. to develop appropriate mechanisms to audit the success of the EIA in predicting, monitoring and responding to impacts; who conducts the audit: government, proponent, independent boards, other

11. to determine the acceptability of the proposal in conjunction with the other factors that go into the assessment of a project

The Task Force recommends that a screening process be included as part of the EIA legislation, and the regulations should define:

1. which projects need an EIA

2. which do not

PROCESS AND PROCEDURES

The Task Force recommends the following process and procedures be utilized:

- The Proponent's responsibility in the EIA process should be to prepare an Environmental Impact Statement utilizing commonly recognized scientific methods.

- There should be clear guidelines and criteria for developing the Terms of Reference. Scoping of the Terms of Reference involve the Proponent, governments, public and Board. The Board should approve the Terms of Reference.

- There should be a right of appeal of the Terms of Reference.

Public Involvement and Notification

1. Background documents should be available to the public.

2. Public involvement is an integral part of the EIA process and should be included in the legislation.

3. Public involvement is a shared responsibility, and the legislation should clearly define the role of the public and decison making process.

4. The public should be involved early in the process; the earlier, the better. The public should be given time to understand the proposal and have their views considered. Public notification should occur early using direct notification, press, radio, television and newspaper media outlets as well as existing networks.

5. The public should have input into the screening process to determine whether an EIA is required.

6. The process should be flexible to take into account regional, urban, rural and cultural differences.

7. There should be certainty in the process by establishing mutually agreed upon schedules for reviewing the proposal.

8. There should be a general definition of the public and area affected, with the Board having the discretion to rule on interventions in the review process.

9. There should be an appeal mechanism at the key decision-making point in the process.

Intervenor Funding

Intervenor funding is essential for meaningful public participation and should be embodied in the legislation using the following criteria:

Compensation may be provided to any person or group who:

1. a) has a clearly ascertainable interest which ought to be represented at the hearing, or

   b) has an established record of legitimate concern for the interest it seeks to represent, or

   c) has a legitimate interest, representation of which is necessary for a fair decision.

2. Those seeking funds must have a clear proposal as to the use they intend to make of the funds and must be sufficiently well-organized to account for the funds.

3. Anyone who has a legitimate interest (including out-of-province interests) is eligible to apply for intervenor funding. Intervenor funding must be available early in the review process. The amount and distribution of the funding should be determined by the Board. This decision must be able to be appealed.

4. Costs of intervenor funding would normally be charged back to the proponent, although in special circumstances the Board could pay the cost itself. The proponent would only be responsible for those costs established as part of the Terms of Reference. Costs beyond this agreement would be the responsibility of the Board. Intervenors with similar interests should be encouraged to pool resources and cooperate.

5. Advance funding should be available as soon as possible after the parties and amounts have been identified.

WORKSHOP RECOMMENDATIONS - INTERIM PROCESS

The following recommendations arose from discussions at the workshop.

A. Native Participation

The Minister of the Environment meet with native peoples as soon as possible to establish a process for their participation in the development of the new legislation. The process could include establishment of a Native Task Force.

B. Public Consultation in the Review of The Draft Legislation

1. The Task Force Report should be made public as soon as possible after submission of the report to the Minister.

2. The legislation should take into account both the Task Force Report and Alberta-Pacific EIA Review Board Report.

3. A broad Public Consultation Plan should be established and should be developed in consultation with public.

4. Education of the public should be an essential part of the review process.

5. A Task Force and workshop process should be reconvened to review the draft legislation as it relates to EIAs.

C. Interim EIA Decision-Making Process

1. Establish interim process based on the following principles:

   a) scoping and screening must be undertaken - inclusion list must be developed

   b) independent quasi-judicial panels for decision making (established as required)

   c) no approvals for new projects until after an EIA is complete

   d) existing ERCB process must continue during the interim process

   e) whatever legislation is available should be applied and enforced

2. The entity established to undertake public consultation process must:

   a) have skill to conduct province-wide process

   b) have credibility (perceived to be objective)

   c) have adequate resources

3. There must be public disclosure of the final report.

4. The consultation process should be flexible to accommodate the variety of needs and backgrounds of the citizens of Alberta. It should not be solely on a "hearing" format.

GENERAL POLICY RECOMMENDATIONS

1. The Government of Alberta should implement a process for a review of all policies and programs where there are environmental implications.

2. All departments involved in resource management should require new policies and programs which foster sustainable development and conservation.

3. Access to environmental protection information should be embodied in the new environmental impact assessment legislation.

4. Collection of the data base should be a coordinated effort of all parties concerned including, but not limited to, government, industry and interest groups. The government should manage the data base.

5. Enforcement provisions should be part of the new EIA legislation. The legislation should bind the Crown.

6. Public involvement must be embodied in all phases of the EIA process. Intervenor funding must also be included to permit meaningful participation by the public.

7. There is concern for the current system of monitoring and there should be a review of all aspects of the monitoring process.

8. The Minister of the Environment should be elevated to a position on the Priorities Committee of Cabinet.

9. The respective roles of various government departments in the business of environmental management must be clarified. The Deputy Minister of Environment should chair an environmental management coordinating group that reviews all relevant environment related business of the provincial government.

10. The new provincial legislation should be as comprehensive and progressive as possible to minimize potential jurisdictional problems and foster proper EIA evaluations through a single environmental review process.

11. The economy and environment considerations should be blended to create a new and clearly defined policy of sustainable development. The development of the required policies and related programs should be the responsibility of the Alberta Round Table process.

12. Where new policy with environmental implications is developed, environmental review must be undertaken with appropriate public involvement.

13. Environmental principles from which policy is developed must have broad-based support (government and public).

14. Any appeal mechanism should have restrictions to prevent unreasonable delays.

TERMS OF REFERENCE
ENVIRONMENTAL IMPACT ASSESSMENT TASK FORCE

1) INTENT

The intent of the Task Force is to examine the Environmental Impact Assessment process in Alberta, and to do so in an informal and timely fashion. Any recommendations made by the Task Force are subject to normal legislative framework approval process.

2) TERMS OF REFERENCE

To advise the Minister of the Environment on possible changes to the current Environmental Impact Assessment Guidelines as outlined in Attachment "A".

3) MEMBERSHIP

The Task Force shall consist of 7 members:

a) two of whom shall represent the Government of Alberta and be nominated by the Minister of the Environment;

b) two of whom shall represent the public and be nominated by the Alberta Environment Network;

c) two of whom shall represent industry,

   i) one being nominated from the Canadian Petroleum Association
   ii) one being nominated from the Alberta Forest Products Association

d) a Chairman nominated by the Minister of the Environment.

4. SCHEDULE

The frequency and location of meetings shall be at the discretion of the Task Force, however it is envisaged that the Task Force will begin deliberations in mid-December and report to the Minister no later than February 28, 1990.

5. BUDGET

The Task Force will carry out their deliberations at a minimum of expense using the resources of the Department of Environment whenever possible. Incidental expenses shall be subject to the approval of the Minister of the Environment.

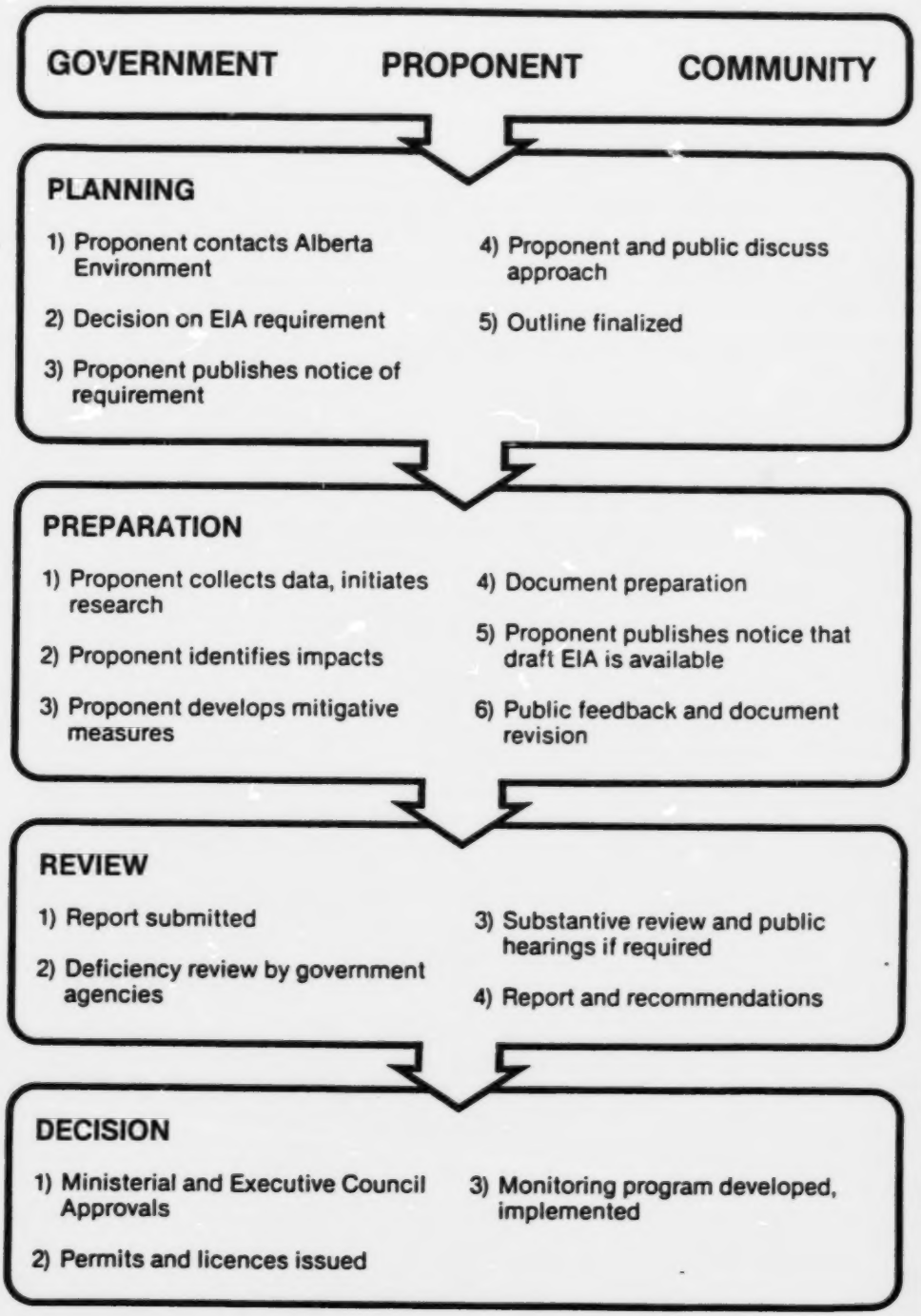
6. COMMUNICATIONS

The Task Force shall conduct their deliberations with a minimum of publicity, and any communications and media enquiries relative to their deliberations shall be referred through the Chairman.

7. REPORTING

The report of the Task Force shall be made public by the Minister in a timely fashion following his review of the recommendations.

Attachment "A"


GOVERNMENT PROPONENT COMMUNITY
PLANNING
1) Proponent contacts Alberta Environment
2) Decision on EIA requirement
3) Proponent publishes notice of requirement
4) Proponent and public discuss approach
5) Outline finalized
PREPARATION
1) Proponent collects data, initiates research
2) Proponent identifies impacts
3) Proponent develops mitigative measures
4) Document preparation
5) Proponent publishes notice that draft EIA is available
6) Public feedback and document revision
REVIEW
1) Report submitted
2) Deficiency review by government agencies
3) Substantive review and public hearings if required
4) Report and recommendations
DECISION
1) Ministerial and Executive Council Approvals
2) Permits and licences issued
3) Monitoring program developed, implemented

APPENDIX II

ALBERTA ENVIRONMENTAL IMPACT ASSESSMENT TASK FORCE

DISCUSSION PAPER

ALBERTA ENVIRONMENTAL IMPACT ASSESSMENT TASK FORCE
DISCUSSION PAPER OUTLINE

		Page
1.	GENERAL	1
2.	SCOPE AND ROLE	2
	2.1 Scope of EIA Legislation	
	(a) Decision Making Responsibility (b) Definition of Environment (c) Proposals subject to EIA review (d) Ministerial Discretion (e) Need for proposal or proposed project	3
	2.2 Role of EIA Legislation	4
3.	PROVISION FOR PUBLIC INVOLVEMENT	5
	3.1 Background	
	3.2 Components	
	(a) Notification of formal consideration (b) EIA required, decision	6
	(c) EIAs Terms of Reference (d) Define the public	7
	(e) Notification of hearings/procedures (f) Notification of decision and reasons (g) Accountability	
4.	PROCESS AND PROCEDURES	8
	4.1 Background and Current Practice	
	4.2 Applications/Overlap	
	4.3 Decision-Making Process	
	4.4 Intervenor Funding	9
	4.5 Screening Process	
	4.6 Scoping Process	10
	4.7 Principles	
5.	WHO PREPARES THE EIA?	11
6.	WHO REVIEWS THE EIA?	12
	6.1 ERCB role in energy projects	
	6.2 Federal role	
	6.3 Role of Other Provincial Agencies	13
	6.4 Role of Panel/Board for All Proposals	
	6.5 Institutional Options for Panel/Boards	

1. GENERAL

The Task Force feel that there are at least seven general issues or principles that are prefacing this EIA process design exercise, and we would like you to discuss them. However, if there are more general issues or principles, please feel free to discuss them.

Agree/Disagree

1. All provincial government programs and policies should be subject to environmental review. Very few are now.

2. Need for new/additional policies to address resource management, i.e. forestry, public lands, agriculture, urban expansion, e.g. Eastern Slopes Policy. Some resource management policies regarding water and land have been public since the mid-seventies. However, more can be done and done publicly.

3. Need for access to information related to environmental protection, and in particular EIAs. Current practice is that the public haven't had this type of information (with exception of AlPac). Should the provincial legislation build in access to EIA information?

4. Ongoing commitment by government to collect and maintain baseline data. Different departments collect baseline data on the physical (land, air and water inventory data) and related resource (fisheries, wildlife and forestry inventories). May need to be a stronger commitment to gather more of the related resource types of data.

5. Issue of enforcement of EIA legislation. Should the new legislation provide for ways of making the Minister more accountable for enforcing the new Act?

6. Public involvement before and after policy and project decisions.

7. Need for better understanding of government/industry roles in monitoring - clear groundrules on role of both parties

2. SCOPE AND ROLE

There is a need to set out, in statute form, the formal EIA process for the Province of Alberta. Currently, there is no provincial legislation spelling out the EIA process. However, steps are being taken to remedy this, including the work of the EIA Task Force and this Workshop.

2.1 SCOPE OF THE EIA LEGISLATION

(a) Decision Making Responsibility

Current practice: The Department of the Environment now reviews Environmental Impact Assessments and recommends to the Minister of the Environment, who in turn makes the decision.

Options:

1. The review board or panel would make a decision on the proposal (similar to the ERCB) where there is an appeal).

2. The review board or panel would make a recommendation to the Minister of the Environment who would then make the decision.

(b) Definition of Environment

Options:

1. The air, water and land resources of Alberta and the interactions between these resources and the province's flora and fauna.

2. The components of the Earth and includes air, land and water; all layers of the atmosphere; all organic and inorganic matter and living organisms; and all interacting natural systems.

3. All or any part or combination of the air, land and water of Alberta. If these elements are managed in a wise and integrated fashion, other elements of our environment will be consequently managed for the benefit of all Albertans and more specifically for their quality of life and health.

4. CEAC's definition

Environment means the components of the Earth and includes:

(a) air, land and water;
(b) all layers of the atmosphere'
(c) all organic and living organisms;
(d) the interacting natural systems that include components referred to in parts (a) to (c), i.e. the biophysical environment; and

(e) those aspects of the human economic, social, cultural and health environments which interact directly and indirectly with the biophysical environment.

'It is our view that this definition be fundamental to all environmental assessment activity, but it is equally important that all aspects considered in a specific assessment should be directly related to the subject of that assessment.'

(c) Proposals subject to EIA review

Agree/Disagree

Both private and public proposals should be subject to the EIA legislation. A screening process should be built into this legislation.

Options to defining which proposals are subject to EIA review, include:

1. Defined tightly in regulations under a statute
2. Defined as discretionary in the statute
3. Totally discretionary (i.e. left to Minister of the Environment)

(d) Ministerial Discretion

Agree/Disagree

Legislation must be binding (i.e. shall be enforceable) on all corners of the government including the Minister.

(e) Need for proposal or proposed project

Agree/Disagree

1. Alternatives to the proposal should include the 'No Go' Option!
2. Cumulative and regional impacts as well as local impacts.
3. Land Use allocations, i.e. forestry, agricultural and urban.
4. Socio Economics including full cost/benefit analysis.
5. Public involvement should occur at Terms of Reference stage and throughout the EIA process.

2.2 ROLE OF EIA LEGISLATION

(a) The EIA Task Force feel, that in general terms, the role of EIA legislation is to identify and analyze the potential environmental impacts of a proposal, to analyze the significance of those impacts, and, to determine the acceptability of the proposal.

(b) More specifically, the legislation should embrace the following roles in sequence:

1. To identify existing conditions (baseline data) that should be focussed on, and indicators and areas of major concern.

2. To describe potential impacts (including cumulative and regional, temporarily and spatially).

3. To analyze the significance of those impacts.

4. To develop a plan to mitigate those impacts.

5. To identify impacts that are not fully mitigated.

6. To analyze the significance of those impacts that cannot be fully mitigated.

7. To consider the alternatives to the proposal (including the alternative of not proceeding (no go option) and the impacts of those alternatives.

8. To develop a plan to monitor predicted environmental impacts of proposal into the future.

9. To develop a contingency plan to respond to unpredicted impacts which may occur.

10. To develop appropriate mechanisms to audit the success of the EIA in predicting, monitoring and responding to impacts. Who conducts the audit; government proponent, independent boards, other

11. To determine the acceptability of the proposal.

3. PROVISION FOR PUBLIC INVOLVEMENT

3.1 Background

Issue: Lack of a clear public involvement process with defined roles and responsibilities

Policy Statement: There will be a well-defined public involvement process that defines roles and responsibilities

3.2 Components

(a) Public notification of formal consideration of project by government.

1) How?

Options:

1. public notification through the media: wide distribution
2. direct notification of affected public: site specific

2) Who?

Options:

1. government
2. proponent
3. other

3) When?

Options:

1. within 30 days of decision to consider a project (immediate)
2. within 60-90 days of decision to consider a project (long-term)
3. prior to any other steps of the process occurring

4) Content

Options:

1. public is provided access to background material
2. affected public receives letter of notification

5) Notification of whether an EIA is required

Options:

1. An EIA is required
2. an EIA is not required
3. it's a grey area to be decided upon.

The notification will identify what category the project falls into.

(b) An assessment of whether an EIA is required and reason for decision:

1. Role of the public:

Options:

1. the public is involved
2. the public is not involved

2. If public is involved what is the forum?

Options:

1. full participation in decision making
2. input via submission or other mechanisms to provide data/information for others to make decision.

(c) Public involvement in terms of reference of an EIA:

terms of reference to include:

scope)
define affected area) must be defined
timing)
process)

1) Public participates:

Options:

1. public will have full participation in decision making
2. public will have input into the decision
3. a pre-hearing is held to define terms of reference.

2) Public does not participate:

Options:

1. decision is made by a regulatory body
2. technical decision made by others

3) Public inputs via written submissions or other process to a body assigned to make the decision

4) If there are provisions for public input, then who will lead this process must be defined.

Options:

1. proponent
2. regulatory body
3. other

Notes:

Need to develop criteria for decision, i.e. size of project, dollars invested, location, public concern

(d) Define the public:

Affected by project	Special Interest Groups
- socioeconomic	- specialized use
- environment	- particular interest

Options:

1. Those 'affected by project' with regulatory body representing the interest of all others
2. those 'affected by project' and special interest groups
3. everyone who shows an interest

(e) Public Notification of hearings/procedures:

Options:

1. public notification through the media: wide distribution
2. direct notification of affected public: site specific

(f) Public notification of decision and reasons for the decision

Options:

1. a public announcement of the decision will be made through media outlets

2. a public announcement of the decision will be made through media outlets, and direct letters of communication to all interested parties

3. all of the above, as well as a public information meeting to discuss the decision

(g) Public Accountability

Options:

1. All public submissions are part of public record

2. Public must be prepared to respond to questions/challenges of their submissions

3. Public must present scientific data to support their submissions.

4. PROCESS AND PROCEDURES

4.1 Background and Current Practice

- ministerial policy and discretionary administrative action is now the process currently in place
- process should contain elements of both enabling legislation and regulations

WHAT IS THE DEFINITION OF ENABLING?

Enabling legislation empowers or makes possible the doing of something. For example, a tribunal may only do what it is empowered to do by the legislature. In the case of the ERCB, the Energy Resources Conservation Act is its enabling legislation.

Some legislation is both regulatory in nature and enabling. The Acts administered by the ERCB (Oil & Gas Conservation Act, Pipeline Act, etc.), contain both regulatory and enabling provisions. For example a provision such as:

"18(1) A licence shall not be transferred without the consent of the Board"

is both an enabling provision -- in that it empowers the Board to give consent to a transfer -- and a regulatory provision -- in that it prohibits industry from transferring a licence without consent.

WHAT IS THE DEFINITION OF REGULATION?

A regulation is subordinate legislation and generally contains more detailed instructions or rules as to HOW something must be done.

4.2 Applications/Overlap

Questions to consider:

(a) Can existing and potential future overlap be minimized? How to deal with in any process? Is it good or bad in all cases?

(b) Federal as well as provincial overlap?

(c) Should application overlap be a major concern?

4.3. Decision-Making Process

(a) Internal government review of project's compatability with current government policy
(b) Information meetings - preliminary disclosure

(c) Consultation meeting/full consultation

(d) Mediation/negotiations

(e) Public hearings - informal
quasi-judicial
recommending

4.4 Intervenor Funding

Options:

(a) Who is eligible?

1. locally
2. regionally
3. nationally
4. all of the above

(b) How?

Options:

1. ERCB Model
2. FEARO Model
3. NEB Model

(c) Questions to Consider:

1. Develop Criteria

2. Who decides on Intervenor Funding?

3. Government as a contributor

4. Applicant as a contributor

5. Grouping of intervenors

4.5 Screening Process

(a) Who decides what projects require EIAs?

Options:

1. Ministerial
2. Review Board
3. Permit Panel
4. Legislation that requires when an EIA is required

(b) Question to consider:

Establish exclusion/inclusion list for criteria - grey area

(c) Categories

Options:

1. clearly meets criteria for EIA
2. marginal or discretionary
3. clearly does not require EIA

(d) Question to consider:

Public Involvement in this aspect, if so, how?

4.6 Scoping Process

As each EIA is approached, a decision must be made as to the scope of each one and the nature of each individual review process.

Options:

(a) Full public review of process, including the tasks of public input into the Terms of Reference for the EIA based on help from:

(1) Alberta Environment
(2) federal
(3) review board or panel

(b) Proponent decides exclusively using guidelines

(c) Government takes the lead.

(For energy projects, Alberta Environment or the ERCB?)

(d) Pre-hearing to scope EIA?

(e) Combination of 1-4 above

4.7 Principles

Agree/Disagree

(a) An EIA is part of a broader process which considers the application of the proponent.

(b) No government approval before completion of EIA

(c) Application is deficient until EIA is completed

5. WHO PREPARES THE EIA?

Options:

1. The Government

   - problems
   - cost
   - who pays?
   - who scopes it?
   - liability
   - credibility (does government approve its own EIAs?)

2. The Proponent

   - credibility (ways to improve)

3. Independent Body

   - public involvement in selection of parties involved
   - who appoints?
   - who pays?
   - liability

6. WHO REVIEWS THE EIA?

6.1 Does the ERCB have a role in EIA's prepared by energy project proponents?

Options:

(a) Expanded
(b) Continued (a role in reviewing energy projects)
(c) Limited role
(d) No role

Questions to consider:

(a) Consider EIAs as a requirement of ERCB approval
(b) Energy Projects only?
(c) Other types of projects
(d) Makes final decision - it is a 'go' or 'no go' decision based on environmental impacts.
(e) Panel expansion to accommodate other approval processes - Federal/Provincial/Territorial
(f) Consequences of multiple panels
(g) Changes in ERCB regulations

6.2 Federal Role

What are the criteria for federal involvement?

What is the role of the federal government (NEB, FEARO)?

Options:

(a) jointly administered role
(b) total
(c) limited
(d) none

6.3 Role of Other Provincial Agencies

(a) Who?

List of Review agencies attached

(b) What is their role?

Firstly, many of the provincial agencies have specific technical or other expertise which is used to undertake a comprehensive review of the EIA report.

Secondly, information contained in the EIA report is used by many agencies to assist in budget planning and program delivery.

(c) How do they currently feed into the process?

(d) Involvement in hearings? Mandatory provincial department attendance at hearings.

(e) How should the other jurisdictions be accommodated?

6.4 Role of Panel/Board for All Proposals

Options:

(a) Makes recommendation to Minister of Environment who then makes decision, or

(b) Makes final decision

6.5 Institutional Options for Panels/Boards

Options:

(a) permanent panel (similar to ERCB)	(This will also apply to 6.1)
(b) expand role of ECA	" "
(c) appoint panel for each proposal	" "
(d) Alberta Environment	" "

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